IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

MACA.No. 788 of 2004(G)

OPMV.288/1998 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, TIRUR
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APPELLANTS/PETITIONERS:
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1. **K. KUNCHAYYA, D/O. CHATHAKUTTY, AGED 48 YEARS, OTTUMPURAM HOUSE, NIRAMARUTHUR AMSOM, DESOM, TIRUR TALUK.**

2. **SUNILKUMAR, S/O. KUNCHAYYA, AGED 17 YEARS, (MINOR) REP. BY MOTHER & GUARDIAN K. KUNCHAYYA, D/O. CHATHAKUTTY, NIRAMARUTHUR AMSOM, DESOM, TIRUR TALUK.**

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS/RESPONDENTS:
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1. **MOHAMMED BAVA, S/O. MOIDEENKUTTY, KARIYARAKKAL HOUSE, P.O. NIRAMARUTHOOR.**

2. **V. MANOHARAN, S/O. KUNCHUNNI NAIR, VALAVIL HOUSE, P.O. NIRAMARUTHUR.**

3. **THE UNITED INDIA INSURANCE CO.LTD., P.O. CALICUT, INSURER OF KL-10/B.3156.**

4. **K. SUBRAMANIAN, S/O. KUTTIKRISHNAN NAIR KARIKKAVEETTIL HOUSE, P.O. CHAMRAVATTOM.**

5. **K. VIJAYAN, S/O. CHAKKU, KOORIYIL (P) P.O. NIRAMARUTHOOR.**

6. THE NEW INDIA ASSURANCE CO.LTD.,
P.O. TIRUR - INSURER OF KL-8/3301.

7. CHENNAPPAN, S/O. KANNAN, CHARATH (H)
P.O. NIRAMARUTHOOR, TIRUR TALUK.

BY ADVS. SRI.P.CHANDRASEKHAR R1 AND R2
SRI.P.R.RAMACHANDRA MENON -- R3
SRI.A.C.DEVY -- R6

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 788 of 2004

Dated this the 19th day of June, 2007

Judgment

Koshy, J.

Appellants are the petitioners in O.P. (MV) No.288 of 1998 on the file of the Motor Accidents Claims Tribunal, Tirur. First appellant is the mother and second appellant is the brother of Sudheer who died in an accident occurred on 9.3.1995. The case of the appellants is that on 9.3.19195 by about 11.00 hours deceased Sudheer was travelling in a jeep bearing registration No.KL/10B 3156 from Unnian to Tirur. The jeep was driven in a rash and negligent manner. When it reached Naduvilangadi, it hit on another trekker bearing registration NO.KL/8 3301. The collision was because of the rash and negligent manner of driving of both the vehicles by the drivers. Deceased Sudheer sustained very severe injuries. He was immediately rushed to the Government Hospital, Tirur, but, he died shortly. Even though the deceased was aged only 16 at the time of his death, he was working as a mason and was earning a livelihood for his family because his father has deserted

them long back. Father was made as the seventh respondent in the claim petition. It is their case that since father has deserted them and deceased Sudheer was the only earning member of the family, he was looking after his mother and younger brother, the claimants, and compelled to work as a mason due to poverty and was earning Rs.3,000/- per month. The tribunal did not accept the contention that he was getting Rs.3,000- as monthly income and fixed Rs.15,000/- (Rs.1,250/- per month) as notional income as fixed for a non-earning person in the second schedule and compensation was calculated taking 16 as the multiplier considering the guidelines in the second schedule. The tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent. Only quantum of compensation is disputed in this appeal.

2. Even going by the second schedule in a claim under section 163-A of the Compensation Act, compensation payable for death of a non-earning person aged between 15 and 20 is Rs.Two lakhs. (As per structured formula, if the annual income is Rs.12,000/- compensation for dath will be Rs.2,40,000/- and if the annual income is Rs.18,000/-, compensation will be

Rs.3,60,000/-. Since notional income is Rs.15,000/-, compensation as per the formula for death is Rs.3,00,000/-. After deducting amount for personal expenses, compensation payable will be Rs.2,00,000/-.) If compensation payable for a non-earning person is granted under section 163-A where negligence of the driver of the offending vehicle need not be proved. Hence, it is argued that compensation payable for an earning person under section 166 when the driver of the offending vehicle is proved to be negligent cannot be less than that was awarded under section 163-A, but, here, total compensation awarded is Rs.1,69,500/-. Considering the fact that he was compelled to work, he cannot be called as a non-earning person. Mother was aged 42 and deceased was 16. Hence, 16 multiplier taken by the tribunal needs no enhancement. We take Rs.1,500/- as monthly income and after deducting one-third, compensation payable will be Rs.1000 x 12 x 16 = 1,92,000/-. Thus, claimants will be entitled to get Rs.32,000/- more as compensation. The above amount of Rs.32,000/- shall be deposited by the third respondent insurance company with 7% interest from the date of

application till its deposit. On deposit of the amount, claimants are allowed to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.NO.788/2004

JUDGMENT

Dated:19th June, 2007